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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

|                      |   |                               |   |
|----------------------|---|-------------------------------|---|
| MELVIN DUKES,        | } | Case No. CV 11-7365-CJC (DTB) |   |
| Petitioner,          |   | }                             | ORDER RE SUMMARY DISMISSAL<br>OF ACTION |
| vs.                  |   |                               |   |
| WARDEN CASH, et al., |   |                               |   |
| Respondents.         | } |                               |   |

Petitioner, a California state prisoner currently incarcerated at California State Prison in Lancaster, California ("CSP-Lancaster"), purported to file a Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition") herein on September 7, 2011.

From the face of the Petition, it appears that petitioner's claims are not directed to the legality or duration of petitioner's current confinement. Rather, petitioner's claims appear to be directed to the conditions of his confinement at CSP-Lancaster. The petitioner appears to contend that various correctional officers confiscated his personal belongings, including his sweatshirt, sweat pants, head phones, head phone cable and video cable, without any cause or authority.

Claims such as these, which are directed to the conditions of a petitioner's confinement, may not properly be asserted in a habeas petition, or as part of a habeas

1 petition. See 28 U.S.C. § 2254(a); see also Preiser v. Rodriguez, 411 U.S. 475, 498-  
2 500, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973). Rather, such claims must be asserted  
3 in a separate civil rights action.

4 The Court does have discretion to construe petitioner's habeas petition as a  
5 civil rights complaint. See Wilwording v. Swenson, 404 U.S. 249, 251, 92 S. Ct. 407,  
6 30 L. Ed. 2d 418 (1971); Hansen v. May, 502 F.2d 728, 729 (9th Cir. 1974).  
7 However, in this instance, the Court chooses not to exercise such discretion for the  
8 following reasons:


9 First, petitioner has failed to make an adequate showing of indigency. The  
10 Prison Litigation Reform Act of 1995 (Public Law 104-134, 110 Stat. 1321)  
11 ("PLRA") amended 28 U.S.C. § 1915 to provide, inter alia, that all prisoners who file  
12 civil actions must pay the full amount of the filing fee, and that any prisoner seeking  
13 to file a complaint in a civil action without prepayment of fees must submit a  
14 completed Declaration in Support of Request to Proceed In Forma Pauperis. In  
15 addition, prisoners must submit a certified copy of their prison trust fund account  
16 statement for the 6-month period immediately preceding the filing of his/her  
17 complaint, obtained from the appropriate official of the prison at which the prisoner  
18 is confined. See 28 U.S.C. §§ 1915(a)(1)-(2), 1915(b)(1). Here, when petitioner  
19 submitted his "Petition" for filing, he failed to submit a certified copy of his trust  
20 account statement for the last six months.

21 Moreover, as the current action was not submitted on a civil rights complaint  
22 form, certain critical information, such as the capacity in which the defendants are  
23 named, is lacking.

24 Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United  
25 States District Courts, IT THEREFORE IS ORDERED that this action be summarily  
26 dismissed without prejudice. The Clerk is directed to send petitioner a blank Central  
27 District civil rights complaint form, which petitioner is encouraged to utilize should  
28 he desire to pursue this action.

1 LET JUDGMENT BE ENTERED ACCORDINGLY.

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3 DATED: September 19, 2011

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6 CORMAC J. CARNEY  
UNITED STATES DISTRICT JUDGE

7 Presented by:

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10 David T. Bristow  
11 United States Magistrate Judge  
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